Supreme Court, U. S.
FILED
JUN 25 1975
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

NO. 74-1655

MRS. FERNE CARLTON MAPES AND EDMOND R. EBERLE,

Plaintiffs - Petitioners

Versus

PAN AMERICAN WORLD AIRWAYS, INC. AND TRAVELERS INSURANCE COMPANY,

Defendants - Respondents

PETITION FOR WRIT OF CERTIORARI

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1.

(a) REPORTS - None

(b) GROUNDS OF JURISDICTION - The United States Court of Appeals for the Fifth Circuit in this proceeding, being Court of Appeal No. 74-4010, has so far departed from the accepted and usual course of judicial proceedings, and has so far sanctioned such a departure by a lower court, as to call for an

exercise of this court's power of supervision.

(i) Date of the judgment of the Court of Appeals sought to be reviewed and the time of its entry was March 3, 1975.

(ii) The date of the judgment of the Court of Appeals denying a petition for rehearing and the time of its entry was March 28, 1975.

(iii) STATUTORY PROVISION CONFERRING JURISDICTION - Article III, Section I and 2 of the United States Constitution.

(c) QUESTIONS PRESENTED FOR REVIEW -

I - DOES THE RIGHT OF EVERY CITIZEN OF ACCESS TO THE FEDERAL COURTS UNDER THEIR DIVERSITY JURISDICTION ENCOMPASS A FAIR AND IMPARTIAL TRIAL AND A DULY CONSIDERED AND REASONED OPINION BY THE TRIAL COURT ?

II - DOES THE RIGHT OF FEDERAL APPEAL HELD BY EVERY LITIGANT ENCOMPASS A FAIR AND IMPARTIAL HEARING AND A DULY CONSIDERED AND REASONED OPINION BY THE COURT OF APPEALS ?

III - DOES THE USE OF THE "Summary Calendar" BY THE FIFTH CIRCUIT COURT OF

APPEALS DEPRIVE A LITIGANT OF HIS RIGHT OF APPEAL ?

IV - DOES A Per Curiam Decree WITHOUT ANY OPINION DEPRIVE A LITIGANT OF HIS RIGHT TO PETITION FOR REHEARING ?

V - IS A CAUSE OF ACTION STATED IN PETITIONER'S ORIGINAL COMPLAINT FILED IN THE DISTRICT COURT ?

(d) LAWS INVOLVED -

Amendment V of the United States Constitution: "No person shall...be deprived of life, liberty, or property, without due process of law..."

Federal Rules of Procedure relative to right of appeal

Rule 40 Petition for Rehearing - "...The petition shall state with particlarity the points of law or fact which in the opinion of the petitioner the court has over looked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present..."

Local Rule 18 of the United States Court of Appeals, Fifth Circuit: "(a) Whenever the

Court, sua sponte or on suggestion to a party, concludes that a case is of such character as not to justify oral argument, the case may be placed on the Summary Calendar. (b) A separate Summary Calendar will be maintained for those cases to be considered without oral argument. Cases will be placed on the Summary Calendar by the Clerk, pursuant to directions from the Court. (c) Notice in writing shall be given to the parties or their counsel of the transfer of the case to the Summary Calendar."

(e) CONCISE STATEMENT OF THE CASE - On September 9, 1970, petitioner, Ferne Carlton Mapes, a resident of New Orleans, received information that she was being sought by Travelers Insurance Company as the beneficiary on a certificate of insurance issued on the life of her former husband, Henry L. Bodden. On said date she employed petitioner, Edmond R. Eberle, as her attorney to represent her in obtaining the policy proceeds.

Investigation disclosed that the certificate of insurance in question was issued by

Travelers Insurance Company pursuant to a group insurance policy issued to the employer of Henry L. Bodden, namely, Pan American World Airways, Inc.

The Travelers Insurance Claims Office assured petitioners that Ferne Carlton Mapes was in fact the named beneficiary on the certificate of insurance and that there had been no changes of beneficiary from the time of inception of the policy until the date of death of the insured on December 25, 1969. Travelers assured petitioners that according to the records of Pan American World Airways, Inc. and the records of Travelers Insurance Company, there had been no changes or attempts to change the certificate of insurance from its inception until the insured's death.

However, petitioners were advised that the decedent's separated wife, Evelyn E. Bodden, was making some "equitable" claim to the policy proceeds, but was not claiming to be beneficiary by way of a change of beneficiary.

In due course, Travelers Insurance Company filed an interpleader action in the Federal Court for the Middle District of Florida, Orlando Division, No. 70-73.

Throughout this matter and the subsequent trial, both Travelers Insurance Company and Pan American World Airways, Inc., have maintained that there was no change of beneficiary and that petitioner, Ferne Carlton Mapes remained as beneficiary.

It was only after many months of trial preparation, depositions in Florida and research that petitioners learned of the assertion by Evelyn E. Bodden that she had "found" a change of beneficiary form. On May 12, 1971, some year and one-half after the decedent's death, decedent's separated wife filed what she claimed to be a copy of a change of beneficiary form. There was no evidence that the form had been filed with either the employer or the insurer, there was no evidence to indicate that the form was authentic, there was no evidence to indicate that the provisions of the policy regarding changes of beneficiary had

been complied with and there was no evidence to indicate the Florida law, which follows a strict construction interpretation of policy provisions would give any "aid and assistance" to the contentions of legal efficacy of the alleged change of beneficiary form.

Upon realizing the possible implications and consequences raised by the "finding" of the alleged change of beneficiary form, both Evelyn E. Bodden and Ferne C. Mapes attempted to file in the interpleader court, damage claims against Pan American World Airways, Inc. and Travelers Insurance Company for the anticipated harm and damage which could occur to them as the result of negligence and failure of said defendants to properly administer the change of beneficiary. However, the interpleader court would not allow either claim to be filed.

The interpleader court, without citing any legal authorities, upheld the legal effectiveness of the recently found beneficiary form and in its judgment stated that Pan

American was the agent of Travelers Insurance Company and that the necessity for litigation and controversy arose because Pan American as agent of Travelers apparently lost or misplaced the change of beneficiary form that was filed by the decedent.

The decision of the Florida District Court was appealed to the United States Court of Appeals, Fifth Circuit, in Proceedings No. 72-1919, which on November 15, 1972, affirmed the ruling of the District Court. This was done after the Court of Appeals placed the matter on its "Summary Calendar" and affirmed the ruling of the District Court in a Per Curiam Decree without opinion.

Having "lived" with this case from September 9, 1970 through its final determination on November 15, 1972, in the Court of Appeals, petitioners felt that only due to the actions and/or inactions of Pan American World Airways, Inc and Travelers Insurance Company, were they re-

quired to become involved in the interpleader proceedings. Petitioner, Ferne Carlton Mapes, did not seek out Travelers Insurance Company but was sought out actively by Travelers Insurance Company. Said petitioner did not attempt to change and undo any records, but was simply protecting her interests as same were disclosed to be by Travelers Insurance Company and Pan American World Airways, Inc. Said petitioners appearance in the interpleader action and her attempt to obtain that which she considered to be her rightful proceeds of the insurance policy, that is, $30,000.00, was a direct result of the negligence and failure of defendants to properly administer the change in beneficiary. This was specifically stated by the District Court.

Feeling damaged and aggrieved by the actions and inactions of Pan American World Airways, Inc. and Travelers Insurance Company, which actions and inactions had been declared negligent by the District Court, petitioners filed the instant damage suit.

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On September 11, 1974, the District Court in New Orleans granted defendants' Motion to Dismiss and gave written "Reasons for Judgment," stating ....."Plaintiffs have asserted no claim on which relief could be granted as required by Federal Rule of Civil Procedure 12 (b) (6) and have provided the court with no legal authority to support their case."

Petitioners filed a Motion for New Trial with a memorandum containing voluminous authorities supporting such a cause of action, as set forth in such respective authorities as Corpus Jurus Secundum, American Jurisprudence, etc., however, on October 16, 1974, the Trial Court denied petitioners' request for a new trial and gave no reasons for judgment.

On February 21, 1975, the Court of Appeals again applied Local Rule 18 and transferred petitioners appeal to its Summary Calendar.

On March 3, 1975, by Per Curiam Decree without opinion affirmed the District Court's

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decision.

Petitioners duly filed a Petition for Rehearing and on March 28, 1975, again in a Per Curiam Decree, without opinion, the Court of Appeals denied the Petition for Rehearing.

(f) Not Applicable.

(g) BASIS FOR A FEDERAL JURISDICTION - DIVERSITY JURISDICTION.

(h) ARGUMENT - Petitioners, Ferne Carlton Mapes, a lay person, and Edmond R. Eberle, a practicing attorney, were victims of the negligence and carelessness of defendants in handling their changes of beneficiaries. The Florida District Court stated on page 114 of its transcript "....the necessity for this litigation and controversy arose because Pan American as an agent of Travelers apparently has lost or misplaced the change of beneficiary form...".

Petitioner, Ferne Carlton Mapes, did not seek out Travelers Insurance Company,

but was sought after by Travelers Insurance Company. Petitioner, Ferne Carlton Mapes, did not seek to change any records held by defendants, but acted solely on the assurance that the records of defendants as certified by them, were the actual records. Petitioner Mapes had no alternative, upon learning that she was the named beneficiary without any changes of beneficiary made, to protect her interest and assert her rights in the interpleader action. Common sense and rights of property dictated nothing less. The enormous time and energy consumed by petitioners in defending her rights as assured by defendants was all to go for naught as a result of the courts ruling that there had in fact been a change of beneficiary filed. Until such decree was affirmed on appeal, petitioner, Ferne Carlton Mapes, had every right to exhaust her judicial remedies in seeking to obtain what she felt was rightfully hers. It is quite obvious that both petitioners have been severely damaged as a result of the negligence and carelessness of defendants.

The due process clause of the Fifth Amendment certainly contemplates a fair and impartial trial with reasoned decisions on both trial and appellate levels. In addition, it must contemplate an appellate opinion to which a petition for rehearing can refer. Without an opinion, a right to file a petition for re-hearing is an empty right which cannot be exercised.

As mentioned previously, petitioner, Ferne Carlton Mapes, attempted to file a damage claim in the interpleader proceedings but was denied the right to file same by the District Court. In any event, the full extent of said petitioners' damages could not be ascertained at that time, as resort was being made to the Court of Appeals.

Without wishing to belabor this point, petitioners wish to assure this Supreme Court that ample judicial authorities were cited to both the Trial Court in New Orleans

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nd the Fifth Circuit Court of Appeals as upporting a cause of action for the damages sustained by petitioners.

However, perhaps a more compelling eason for this application for a Writ f Certiorari lies in the apparent failre of the Federal,District and Appellate ourt to render a fair and impartial and onsidered reasoned opinions. It must be ointed out that both in the interpleader it and in the instant damage suit, there ere decisions by the District Courts, ransfer of the cases on appeals to the mmary Calendar by the Court of Appeals, d Per Curiam Decree without opinion, by e Court of Appeals. In substance, petioners attack the apparent lack of ingrity in the Federal Judicial System, if is to be construed as condoning the rering of decisions without reasoned judgnts setting forth authorities supporting ch actions.

In the instant case, and in the pre-

decessor interpleader case, volumes of authorities were cited to the Federal District Courts and to the Court of Appeals. Neither the District Courts nor the Court of Appeals in either case saw fit to explain or particularize in any way the decision it had reached. Not one case was cited against petitioners by the District or Appellate Courts in either case. The lack of a reasoned opinion creates an apparent lack of judicial consideration of the cases.

The seemingly automatic transfer of the cases to the Summary Calendar likewise compound the apparent lack of judicial consideration that was given to these cases.

It is submitted that the right of every citizen to access to the courts encompasses a decision which will explain and justify the courts actions. Likewise, the right of appeal should be thought of as not simply an affirming or a denying of the lower courts decision, but of a reasoned opinion, setting

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forth the court's action.

The use of the Per Curiam Decree without opinion, unquestionably deprives the petitioners of the right to file and have considered a Petition for Re-hearing. The very basis for a re-hearing is to state with particularity the points of law or fact which the court has overlooked or misapprehended. Obviously, where the court renders no opinion and simply affirms or denies, there is no opportunity to point out what the court overlooked or what the court misapprehended.

C O N C L U S I O N

In conclusion, petitioners pray that this Supreme Court grant a Writ of Certiorari to the Court of Appeal, Fifth Circuit, to review the validity of the proceedings had before it and particularly the use of the Summary Calendar and Per Curiam Decrees without opinions, such as was done in the instant case.

Respectfully submitted:

Edmond R. Eberle
Attorney in
Proper Person
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New Orleans,
Louisiana 70130

Bernard S. Dolbear
Attorney for Petitioner,
Mrs. Ferne Carlton Mapes
514 K & B Plaza
New Orleans, Louisiana 70130

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C E R T I F I C A T E

I hereby certify that three (3) copies f the above and foregoing Petition for Writ f Certiorari have been deposited in the .S. Mail, with first class postage pre- aid, addressed to counsels of record at heir post office address, on this 24th ay of June, 1975.

Edward F. Eberle

Bernard S. Dolbare

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 74-4010
Summary Calendar*

DO NOT PUBLISH

MRS. FERNE CARLTON MAPES and
EDMOND R. EBERLE,

Plaintiffs-Appellants,

versus

PAN AMERICAN WORLD AIRWAYS, INC.
and TRAVELERS INSURANCE COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana

(March 3, 1975)

Before COLEMAN, AINSWORTH and SIMPSON,
Circuit Judges.

PER CURIAM:

AFFIRMED. See Local Rule 21.[1]

*Rule 18, 5 Cir.; See Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

[1] See NLRB v. Amalgamated Clothing Workers of America, 5 Cir. 1970, 430 F.2d 966.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES COURT OF APPEALS
FILED
MAR 28 '75
EDWARD W. WADSWORTH
CLERK

NO. 74-4010

MRS. FERNE CARLTON MAPES and
EDMOND R. EBERLE,

Plaintiffs-Appellants,

versus

PAN AMERICAN WORLD AIRWAYS, INC., and
TRAVELERS INSURANCE COMPANY,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana

ON PETITION FOR REHEARING

(March 28 , 1975)

Before COLEMAN, AINSWORTH and SIMPSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

600 CAMP STREET
NEW ORLEANS, LA. 70130

February 21, 1975

TO COUNSEL OR PARTIES LISTED BELOW:

NO. S 74-4010 - MRS. FERNE CARLTON MAPES AND
EDMOND R. EBERLE V. PAN AMERICAN WORLD AIRWAYS, INC.

Gentlemen:

You are hereby notified that a panel of this Court, after due consideration and pursuant to Local Rule 18, has transferred the referenced case to the Summary Calendar for disposition.

Local Rule 18 states: "(a) Whenever the Court, sua sponte or on suggestion of a party, concludes that a case is of such character as not to justify oral argument, the case may be placed on the summary calendar. (b) A separate summary calendar will be maintained for those cases to be considered without oral argument. Cases will be placed on the summary calendar by the Clerk, pursuant to directions from the Court. (c) Notice in writing shall be given to the parties or their counsel of the transfer of the case to the summary calendar."

Yours sincerely,

EDWARD W. WADSWORTH, Clerk

BY: [signature]

Mr. Edmond R. Eberle
Mr. William A. Porteous, III
Mr. John C. Combe, Jr.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SEP 16 3 22 PM '74
BENJAMIN W. REISCH
CLERK

MRS. FERNE CARLTON MAPES
and EDMOND R. EBERLE

vs

PAN AMERICAN WORLD AIRWAYS, INC.
and TRAVELERS INSURANCE COMPANY

CIVIL ACTION

NO. 73-1373

SECTION "H"

JUDGMENT

This cause came on for hearing before the Court on a former date on motions of defendants to dismiss, wherein the Court granted said motions.

Now, therefore, considering the written reasons of the Court on file herein;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of defendants, PAN AMERICAN WORLD AIRWAYS, INC. and TRAVELERS INSURANCE COMPANY, and against plaintiffs, MRS. FERNE CARLTON MAPES and EDMOND R. EBERLE, dismissing said plaintiffs' complaint, each party to bear their own costs.

New Orleans, Louisiana, this 16th day of September, 1974.

BENJAMIN W. REISCH, Clerk

BY: Nilsen C. Jones
CHIEF DEPUTY CLERK

APPROVED AS TO FORM:

RBeer

UNITED STATES DISTRICT JUDGE

DATE OF ENTRY SEP 16 1974

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SEP 11 5 07 PM '74
CLERK

MRS. FERNE CARLTON MAPES EDMOND R. EBERLE	CIVIL ACTION
VERSUS	NO. 73-1373
PAN AMERICAN WORLD AIRWAYS, INC. TRAVELERS INSURANCE COMPANY	SECTION "H"

REASONS FOR JUDGMENT

On Wednesday, September 4, 1974 the motion of defendants, Pan American World Airways, Inc. and Travelers Insurance Company, to dismiss was heard. The essential facts are undisputed.

After careful consideration of the briefs submitted by counsel prior to oral argument in court, as well as the presentation made in court, the motion to dismiss was GRANTED.

Counsel for plaintiffs filed this action, seeking damages of $50,000.00 for himself individually and damages of $50,000.00 on behalf of his client, Mrs. Ferne Carlton Mapes, whom he had represented in a prior interpleader action before the United States District Court for the Middle District of Florida.

At issue in the Florida litigation was the proceeds of a $30,000.00 life insurance policy issued by defendant Travelers Insurance Company through Pan American World Airways, Inc., the employer of the deceased in whose name the policy in dispute was issued. The specific issue resolved in the Florida proceeding and affirmed by the Fifth Circuit was the propriety of a change of beneficiary executed by the decedent prior to his death.

That issue was resolved against plaintiff in the Florida action, Mrs. Mapes, who was married to decedent for a brief period of time in the interim between his first marriage and re-marriage to Evelyn Bodden, who was decedent's wife at the time of his death.

DATE OF ENTRY SEP 12 1974

Plaintiffs in this action became aware of the change in beneficiary prior to trial in the Florida interpleader action by way of answers to requests for admissions during the normal course of pre-trial discovery.

In their initial pleadings, plaintiffs have asserted no claim on which relief could be granted, as required by Federal Rule of Civil Procedure 12(b)(6), and have provided the Court with no legal authority to support their case.

For the foregoing reasons, the motion of defendant, Travelers Insurance Company, joined by Pan American World Airways, Inc., to dismiss was granted on September 4, 1974.

New Orleans, Louisiana, this 11th day of September, 1974.

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UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

MRS. FERNE CARLTON MAPES
AND
EDMOND R. EBERLE
PLAINTIFFS

CIVIL ACTION NO.

SECTION

VS.

PAN AMERICAN WORLD AIRWAYS, INC.
AND
TRAVELERS INSURANCE CO.
DEFENDANTS

COMPLAINT

Plaintiffs, Ferne Carlton Mapes and Edmond R. Eberle sue the above captioned defendants and for statement of claim allege:

Combe Lewis

1. Plaintiffs are citizens of the State of Louisiana and defendants are citizens of states other than Louisiana and the matter in controversy exceeds, exclusive of interest and cost, the sum of TEN THOUSAND ($10,000.00) DOLLARS.

Combe Lewis feels at this stage Mapes advised she was named beneficiary

2. On or about September 9, 1970, plaintiff Ferne Carlton Mapes was advised that she was the named beneficiary on a group certificate of insurance issued by defendant Travelers Insurance Co. to defendant Pan American World Airways, Inc. employee Henry L. Bodden and that said Henry L. Bodden had died December 25, 1969. On said date, plaintiff Ferne Carlton Mapes retained plaintiff Edmond R. Eberle, attorney at law, to represent her in obtaining her rightful proceeds from said certificate of insurance from defendant Travelers Insurance Co. office in Orlando, Florida. This was the location of said defendants issuing office, and the location of the domicile of the deceased and his place of employment with defendant Pan American World Airways, Inc.

3. In due course, it was determined that the rights of plaintiff Ferne Carlton Mapes to the proceeds of said insurance, being the sum of $30,000.00, was being challenged by Evelyn E. Bodden, the deceased separated widow. Plaintiff Ferne Carlton Mapes is a former wife of said deceased.

4. As a result of the competing claims, defendant Travelers Insurance Co. filed an interpleader action in the United States District Court for the Middle District of Florida, Orlando Division, No. 70-73 entitled The Travelers Insurance Co. VS. Evelyn E. Bodden and Ferne C. Bodden (now Ferne C. Mapes). Defendant Travelers Insurance Co. deposited with the clerk of court in Florida the proceeds of said certificate of insurance, namely $30,000.00 and let for judicial determination the rightful claimant thereto. In due course, answers were filed by the respective defendants in the interpleader action each claiming entitlement to the deposited funds.

5. The interpleader complaint alleged that on June 23, 1958, Travelers Insurance Co. issued to Pan American World Airways, Inc. a group policy of life insurance for the benefit of employees of Pan American World Airways, Inc. and that on said date, Travelers Insurance Co. issued to Henry L. Bodden certificate of insurance in which he designated plaintiff Ferne Carlton Bodden, his then wife, beneficiary.

6. From the inception of this matter, plaintiffs were assured by defendant Travelers Insurance Co. and Pan American World Airways that according to the records of both insurer and employer that the deceased had made no change of beneficiary and that according to their respective records, the beneficiary remained as Ferne Carlton Mapes. Due to this strong factual

determination, plaintiffs vigorously pursued the rights of plaintiff Ferne Carlton Mapes in the interpleader proceedings.

7. On or about May 12, 1971 by way of "request for admissions" filed by Evelyn Bodden in the interpleader proceeding, plaintiffs for the first time were informed that Evelyn Bodden had recently found a change of beneficiary executed by the deceased in which she was the new named beneficiary. This allegation coming some sixteen months after the death of the deceased was in due course, after lengthy trial, and appellate review, was held to be a valid and effective change of beneficiary despite the absence of any records of defendants Travelers Insurance Co. or Pan American World Airways, Inc. substantiating same.

8. The United States District Court for the Middle District of Florida, Orlando Division held, and the United States Court of Appeals for the Fifth Circuit affirmed, (No. 72-1919 Judgment November 15, 1972) that decedent Henry L. Bodden on November 25, 1958, filed with defendant Pan American World Airways a change of beneficiary for the Travelers policy in question, having filed the original with Pan American World Airways and retaining a copy of same. The court held that for this purpose, Pan American World Airways was the agent of Travelers Insurance Co. and that an effective change of beneficiary had been accomplished. The court went on to state "Pan American was the agent of this case of Travelers Insurance Co. and the problem in this case, the necessity for this litigation in controversy arose because Pan American as agent of Travelers apparently has lost or misplaced the change of beneficiary form that was filed by Mr. Bodden".